IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.216 & 217 of 2003

Commissioner of Income Tax,
Chennai. ..Appellant

Vs

M/s.Matrix Intel Pvt Ltd,
Chennai. ..Respondent

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 18.03.2003 in I.T.A. Nos.1276 & 1277/Mds/1999 for the assessment years 1995-96 and 1996-97 against the order of the Commissioner of Income tax (Appeal)-IV, Chennai in ITA.Nos.22/98-99/Com.IV (3) 448/98-99 respectively dated 23.06.99 against the order in PAN/GIR.No.M-975 dated 29.01.98 & 30.11.98 respectively on the file of the Assistant Commissioner of Income Tax Company Circle IV (3) Chennai & Deputy Commissioner of Income Tax Company Circle IV (3) Chennai respectively.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department
For Respondent : Mr.V.D.Gopal

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

These appeals are filed by the Revenue under Section 260A of the Income Tax Act, 1961 in I.T.A. Nos.1276 & 1277/Mds/1999, against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench, dated 18.03.2003. On 09.02.2004, this Court admitted these appeals and formulated the following substantial questions of law:

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For the assessment year 1995-96:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the appeal which was filed prior to issue of the circular enhancing the minimum tax effect for filing an appeal to the Tribunal should be governed by the circular and dismissed?"

For the assessment year 1996-97:

> "2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that only gross income should be taken into account for the purpose of deduction u/s 80-O?
> 3. Whether in the facts and circumstances of the case, the Tribunal was right in rejecting the departmental appeal on the ground that the expenses related to earning the foreign income had been estimated?"

2. The brief facts leading to the above questions of law are as under:

The assessee is a domestic company incorporated under the Companies Act. Its main business is Consultancy Services. The relevant assessment years are 1995-96 and 1996-97 and the corresponding accounting years ended on 31.03.1995 and 31.03.1996, respectively. For both the assessment years the assessee also derived commission from foreign counterparts for the consultancy services rendered by them. For the assessment year 1995-96, the assessee filed Return of income on 16.05.1997 admitting Nil income. Later notice was issued under Section 143(2) of the Income-tax Act (hereinafter referred to as the "Act") and the assessment was completed determining total income at Rs.1,08,509/-. For the assessment year 1996-97, the assessee filed Return of income on 16.05.1997 admitting a taxable income of Rs.75,540/-. The Return was processed under Section 143(1)(a) of the Act and an intimation dated 17.10.1997 was issued on the said Return. Later, notice was issued under Section 143(2) of the Act and assessment was completed, determining a total income of Rs.3,27,275/-. The assessee claimed relief under Section 80-O of the Act. The Assessing Officer restricted the deduction, after estimating the expenses in relation to the earning of the consultancy income from abroad and allocating the same between commission earned locally and commission earned from abroad. Aggrieved by the orders, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeals and directed the Assessing Officer to allow the deduction under Section 80-O of the Act in respect of receipts specified in the said section without deducting any expenses. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal confirmed the orders of the C.I.T.(A) by relying on a decision of the

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Income-tax Appellate Tribunal, Bangalore Bench, in the case of M.N.Dastur and Co. Ltd., Vs. DCIT and dismissed the appeals.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that in respect of Question No.1 for the assessment year 1995-96, the Tribunal was wrong in relying on the circular in dismissing the appeal, on the ground of low tax effect. Learned Standing Counsel further relied on this Court judgment reported in 275 ITR 244 in the case of Commissioner of Income-tax Vs. Kodananad Tea Estates Co. and submitted that a direction should be given to the Tribunal to consider the case on merits. In respect of Question Nos.2 and 3, for the assessment year 1996-97, the learned Standing Counsel submitted that the Assessing Officer was right in allocating the expenditure on pro-rata basis between the commission earned locally and the commission earned abroad. Further it is also contended that no material or evidence was furnished by the assessee regarding incurring of expenditure for earning the foreign commission and hence, the Assessing Officer had no option but to allocate the same on proportionate basis.

4. Learned counsel for the assessee submitted that when there was no expenditure incurred for earning the consultancy income, the Assessing Officer was wrong in allocating the expenses on pro-rata basis, between the commission earned locally and commission earned abroad, and therefore, the Assessing Officer was not justified in deducting from foreign commission.

5. Heard the counsel. In respect of Question No.1 relating to the assessment year 1995-96, the Tribunal dismissed the Revenue's appeal as the tax effect was less than Rs.1,00,000/-. Now, the issue is covered by this Court judgment reported in 275 ITR 244 in the case of Commissioner of Income-tax Vs. Kodananad Tea Estates Co. In view of the same, we set aside the order of the Tribunal with a direction to consider the matter on merits. In respect of Question Nos.2 and 3, relating to the assessment year 1996-97, we find that the Tribunal had not given any reasons and it simply relied on the Bangalore Bench decision of the Tribunal in the case of M.N.Dastur and Co. Ltd. Vs. DCIT. The order of the Tribunal reads as under:

> "3. In the assessment year 1996-97, the Revenue is aggrieved by the decision of the C.I.T.(Appeals) in allowing the deduction under sec.80-O without deducting any expenses incurred by the assessee. The C.I.T.(A) while deciding the issue, directed the Assessing Officer to allow deduction under sec.80-O in respect of receipts specified in the said section without deducting any expenses. The C.I.T.(Appeals) has followed the decision of the I.T.A.T., Bangalore Bench in the case of M.N.Dastur and Co. Vs. DCIT.

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4. As the grounds suggests, the Department has filed this appeal only on the reasoning that the decision of the I.T.A.T. has not become final and the Reference Application is pending. The Departmental Representative was unable by bringing any material to show that the decision of the I.T.A.T. is reversed. I, therefore, following the decision of the I.T.A.T., Bangalore Bench in the case of M.N. Dastur and Co., do not find any infirmity in the order of the C.I.T. (Appeals). The appeal is dismissed for the assessment year 1996-97."

From a reading of the above, it is clear that the Tribunal has merely relied on the decision of the Bangalore Bench of the Tribunal, without even giving the citation. The Tribunal is the last fact-finding authority and the Tribunal is required to examine the materials and records before rendering a decision on any issue raised by the parties. The Tribunal ought to have decided the case by recording complete facts and assigning cogent reasons. In this case, mere reference to the decision of the Bangalore Bench of the Tribunal, would not be enough and sufficient. Also, the Tribunal should have considered the arguments advanced by the counsel on both sides and given reasons before coming to the conclusion. Due to non-availability of facts, material or evidences on record, it is difficult for the Court to decide the issue. We find that the issue involved in both the assessment years is common. Hence we also set aside the order of the Tribunal, for the assessment year 1996-97 with a direction to rehear both the appeals afresh after giving reasonable opportunity to both the parties and permit the counsel for the assessee as well as the Revenue to furnish materials, evidence as well as case law, if any, to support their contentions and consider the same and pass orders on merits for both the assessment years, in accordance with law, as expeditiously as possible. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

2. The Commissioner of Income Tax,
Chennai.

3. The Assistant Commissioner of Income Tax
Company Circle IV (3), Chennai.

4. The Deputy Commissioner of Income Tax
Company Circle IV (3), Chennai - 6.

5. The Commissioner of Income Tax,
Appeals IV, Chennai.

1 cc To Mr.V.D.Gopal, Advocate, SR.54965.
1 cc To M/S.Pushys Sitaraman, Advocate, SR.54777.

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RA(CO)
RVL 18.12.2006

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